

~~DOCKET FILE 000-ORIGINAL~~
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

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| In the Matter of |) | |
| |) | |
| Federal-State Joint Board on |) | CC Docket No. 96-45 |
| Universal Service |) | |
| |) | |
| 1998 Biennial Regulatory Review - Streamlined |) | CC Docket No. 98-171 |
| Contributor Reporting Requirements Associated |) | |
| with Administration of Telecommunications Relay |) | |
| Service, North American Numbering Plan, Local |) | |
| Number Portability, and Universal Service Support |) | |
| Mechanisms |) | |
| |) | |
| Telecommunications Services for Individuals with |) | CC Docket No. 90-571 |
| Hearing and Speech Disabilities, and the |) | |
| Americans with Disabilities Act of 1990 |) | |
| |) | |
| Administration of the North American Numbering |) | CC Docket No. 92-237 |
| Plan and North American Numbering Plan Cost |) | NSD File No. L-00-72 |
| Recovery Contribution Factor and Fund Size |) | |
| |) | |
| Number Resource Optimization |) | CC Docket No. <u>99-200</u> |
| |) | |
| Telephone Number Portability |) | CC Docket No. 95-116 |

Joint Comments of 26 Concerned "De Minimis" Carriers

Teltronic, Inc., ERC Communications, Huffman Communications, South Plains Communications, Mobile Relays, Inc., Megahertz Technology, Inc., Electrocomm - Michigan, Inc., Net Wave Communications, Inc., Two Way Radio Service, Inc., Taxi Systems, Inc., T.W.R. Communications, Taxi Equipment Company, Inc., Allcomm Wireless, Inc., Electrocom, Inc., Telecom Network, Inc., General Communications Systems, Inc., Wireless Solutions, DW Communications, Inc., Applied Technology Group, Inc., John Mitchell Company, Collins

Communications, Rayfield Communications, Inc., Technical Electronics, Inc., Reed Enterprises, Tri-State Communications, and Mobilcomm, Inc. (collectively, Joint Commenters) hereby respectfully submit their comments in response to the Federal Communications Commission's *Notice of Proposed Rule Making* (NPRM) in the above-referenced matter.¹

As discussed herein, the Joint Commenters believe that universal service compliance costs will exceed universal service contribution amounts if all small businesses providing interstate telecommunications service are required to contribute to universal service mechanisms. Moreover, the Joint Commenters believe that a reduction or elimination of the *de minimis* standard will negatively impact small businesses who are providing or operating using low-cost communications systems for necessary business communications.

All of the Joint Commenters are "*de minimis* carriers"² who operate under Part 90 of the Commission's rules either as a private land mobile or commercial mobile radio carriers providing private, internal communications systems for the purpose of facilitating smooth business operations. In either case, the radios are used for the coordination of daily business activities, such as building maintenance, security and safety operations, among other activities

¹ See Federal State Joint Board on Universal Service; 1998 Biennial Regulatory Review-Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number resource Optimization; Telephone Number Portability, CC Docket No. 96-45, CC Docket No. 98-171, CC Docket No. 90-571, CC Docket No. 92-237, NSD File No. L-00-72, CC Docket No. 99-200, CC Docket No. 95-116, *Notice of Proposed Rulemaking* (rel. May 8, 2001) (NPRM).

² NPRM at ¶ 31 and n.73, stating that wireless carriers with an expected universal service contribution less than \$10,000 are exempt from contributing to universal service mechanisms. See also, 47 C.F.R. § 54.708. See also, 47 U.S.C. § 254(d).

associated with sound business operation. Moreover, all of the businesses represented in these comments meet the definition of a “small business” under the Small Business Act.³

On May 8, 2001, the Commission released a *Notice of Proposed Rulemaking* seeking comment on how best to streamline and reform the assessment of carrier contributions to universal service fund mechanisms.⁴ In the NPRM, the Commission specifically sought comment on their proposal to retain, reduce or eliminate the *de minimis* exemption for carriers “whose annual contribution to universal service is expected to be less than \$10,000.”⁵

In their Fourth Order on Reconsideration in this proceeding, the Commission, with the guidance of the Federal-State Joint Board on universal service, confirmed that the administrative costs for carriers to contribute to universal service should not exceed the actual contribution, and those carriers should be exempt from universal service contributions under a *de minimis* exemption.⁶ The Joint Commenters have traditionally fit under the Commission’s *de minimis* exemption, and have taken part in the reporting requirements necessary for the exemption from universal service contribution.

The proposed rule change to modify or eliminate the *de minimis* standard however, will significantly increase compliance costs for small businesses providing telecommunications

³ 5 U.S.C. § 601(3), whereby a “‘small business’ has the same meaning as the term ‘small business concern’” under 15 U.S.C § 632. A “small business concern” meets the following criteria: “(1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration.”

⁴ NPRM at ¶ 1.

⁵ *Id.* at ¶ 21.

⁶ See Federal-State Joint Board on Universal Service; Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, CC Docket No. 96-45, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, *Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72*, (rel. Dec. 30, 1997) (Fourth Order).

services. If the *de minimis* exemption is reduced or eliminated, the additional administrative cost associated with universal service compliance for these small carriers will only create an added tax burden for the small business and an increased price passed on to the consumer.

The Regulatory Flexibility Act directs an agency publishing an NPRM to prepare and seek comment on the proposed rule's impact on small entities under Section 603(a) of the U.S. Code.⁷ As small entities with an interest in this proceeding, the Joint Commenters believe that a modification to reduce or eliminate the *de minimis* exemption will have an adverse affect on all small business entities throughout the nation. For example, the Commission noted in the NPRM that the "reporting requirement potentially could require the use of professional skills, including legal and accounting expertise."⁸ The Joint Commenters wish to inform the Commission that reporting requirements *do* require the use of professional skills, and will only continue to require more time and money for professional skills if the *de minimis* exemption were eliminated or additional reporting requirements were mandated by the Commission.

Streamlining bureaucratic procedures is a noble venture and the concept of reform should be fully vetted before all the parties affected when an agency sees the opportunity to enhance their efficiency. However, the Joint Commenters believe that across-the-board reform should not take precedence over maintaining the integrity of our nation's small business community. By reducing or eliminating the *de minimis* standard, small businesses will be faced not only with the burden of an extra tax, but also with the burden of accepting the additional costs associated with compliance. If eliminated, these additional costs will far outweigh the expected contribution amount and will ultimately create another liability for small business owners throughout the

⁷ 5 U.S.C. § 603.

nation. The Joint Commenters therefore urge the Commission to retain the *de minimis* exemption. Moreover, they ask that the Commission refrain from creating additional filing requirements in this proceeding that would increase the costs of compliance with or without actually contributing to universal service mechanisms.

Respectfully submitted,

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⁸ NPRM at ¶ 74.

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Date: June 25, 2001

CERTIFICATE OF SERVICE

I, Jeremy Denton, do hereby certify that on the 25th day of June 2001, I forwarded to the parties listed below a copy of the foregoing Joint Comments of 26 Concerned "De Minimis" Carriers via hand delivery:

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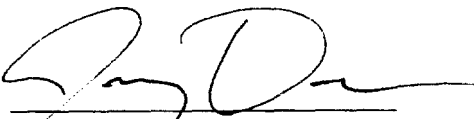
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